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8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10 In re:

Case No.: BK-S-13-15064-LED
Chapter 13

11 DALE I. ELSNER and
12 MARY ANN ELSNER,

13 Debtors.

14 DALE I. ELSNER and
15 MARY ANN ELSNER,

16 Plaintiffs,

17 v.

18 U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE RELATING TO CHEVY
19 CHASE FUNDING LLC MORTGAGE
BACKED CERTIFICATES SERIES 2006-4;
20 DOES I through XXV inclusive,

21 Defendants.

Adv. Proc. No.

2376.024771-th

22 **COMPLAINT**

23 COMES NOW, Plaintiffs, DALE I. ELSNER and MARY ANN ELSNER (referred to
24 hereinafter as "Plaintiffs"), by and through their counsel, John Peter Lee, Ltd., and as and for their
25 complaint against Defendants, allege as follows:

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1 **I. JURISDICTION AND VENUE**

2 1. This Court has jurisdiction pursuant to 28 U.S.C. § 157(b) and 28 U.S.C. § 1334. This is a
3 core proceeding under 28 U.S.C. § 157(b)(2)(O). Venue is proper under 28 U.S.C. § 1409.

4 **II. PARTIES**

5 2. Plaintiffs are and were at all times relevant hereto, residents of Clark County, Nevada.

6 3. Upon information and belief, Defendant U.S. Bank National Association, as Trustee Relating
7 to Chevy Chase Funding LLC Mortgage Backed Certificates Series 2006-4 is a National Association
8 organized under the laws of the United States, having its principal place of business in Minneapolis,
9 Min and conducting business in Clark County, Nevada.

10 4. The true names and capacities, whether individual, corporate, associate, or otherwise, of
11 Defendants DOES I through XXV are unknown to Plaintiffs, who therefore sues said Defendants
12 by such fictitious names. Plaintiffs allege that each of said fictitious Defendants by such fictitious
13 is in some manner responsibly for the acts hereinafter set forth. Plaintiffs will amend this Complaint
14 to show the true names and capacities of these DOE Defendants, as well as the manner in which each
15 fictitious Defendant is responsible, when these facts are ascertained.

16 5. Plaintiffs are informed and believe, and on that basis allege, that at all times herein
17 mentioned each of the Defendants was an agent, servant, employee, and/or joint venturer of each of
18 the remaining Defendants, and was at all times acting within the course and scope of such agency,
19 service, employment, and/or joint venture, and each Defendant has ratified, approved, and authorized
20 the acts of each of the remaining Defendants with full knowledge of said facts.

21 6. Defendants, and each of them, aided and abetted, encouraged, and rendered substantial
22 assistance to the other Defendants in breaching their obligations to Plaintiffs, as alleged herein. In
23 taking action, as alleged herein, to aid and abet and substantially assist the commissions of these
24 wrongful acts and other wrongdoings complained of, each of the Defendants acted with an awareness
25 of its/his/her primary wrongdoing and realized that its/his/her conduct would substantially assist the
26 accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

27 7. There is a unity of interest between Defendants, and each acts as the alter ego of the other.

28 ...

1 8. Any applicable statutes of limitation have been tolled by Defendants' continuing, knowing
2 and active concealment of the facts alleged herein. By virtue of Defendants' concealment and
3 misrepresentations to Plaintiffs, Plaintiffs could not and did not discover Defendants' actions.

4 9. In the alternative, Defendants should be estopped from relying on any statutes of limitation.
5 Defendants owed Plaintiffs an affirmative duty of full and fair disclosure, but knowingly failed to
6 honor and discharge such duty. Finally, Defendants' conduct is not barred by any statutes of
7 limitation because Defendants' conduct constitutes an ongoing violation of Plaintiff's rights, which
8 continues to the present.

9 **III. FACTUAL ALLEGATIONS.**

10 10. Plaintiffs purchased their home at 11000 Sundown Hill Avenue, Las Vegas, Nevada (the
11 "Home") in or about March 1999. Plaintiffs paid approximately \$165,900.00 for the Home.
12 Plaintiffs re-financed the Home in 2006 with an Adjustable Rate Note.

13 11. In or about July 2011, Plaintiffs were notified that their monthly payment would increase
14 from approximately \$800.00 per month to more than \$1,200.00 per month. Because Plaintiffs live
15 on a fixed income, they knew they would be unable to make the increased mortgage payment.

16 12. Plaintiffs immediately contacted Defendant to request a loan modification. Defendant
17 told Plaintiffs that they would receive loan modification paperwork and that they would need to
18 submit Plaintiffs' proof of income, which Plaintiffs promptly sent to Defendant.

19 13. Following their submission of the requested paperwork, Plaintiffs contacted Defendant again
20 to inquire as to the status of the loan modification and were told that they needed to submit
21 additional documentation.

22 14. This process repeated itself for nearly two (2) years, with instances when Defendant would
23 advised Plaintiffs that it had received all the necessary documentation only to advise Plaintiffs later
24 that documentation was missing and the process would have to be re-started. Each time, Plaintiffs
25 would re-submit the requested documentation.

26 15. At other times, Plaintiffs were informed by Defendant that it had received all documentation
27 and that a loan modification was forthcoming. Yet no decision was forthcoming.

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16. On or about March 29, 2012, Defendant filed a complaint in the Eighth Judicial District Court, case number A-12-659149-C, seeking to foreclose on Plaintiffs' Home. A default judgment was entered against Plaintiffs on or about March 19, 2013.

17. On June 7, 2013, Debtors filed a petition in bankruptcy under Chapter 13 of the U.S. Bankruptcy Code, Case Number 13-15064.

19. On October 9, 2013, Defendant filed a Motion for Relief from Automatic Stay with respect to Debtors' residence.

20. Debtors opposed relief from stay on the basis that they were attempting to obtain a loan modification from Defendant.

21. On or about February 19, 2014, Defendant finally notified Plaintiffs that there would be no modification of their loan.

FIRST CAUSE OF ACTION
(Fraud)

22. Plaintiffs repeat and reallege each and every allegation above and incorporates such as if fully set forth herein.

23. Defendant made false representations of material fact to Plaintiffs as described above including but not limited to:

- (a) They would likely receive a modification;
- (b) That they would receive a decision on their request within 45-60 days;
- (c) That Plaintiffs constantly needed to "update their file" by continuously re-sending duplicative piecemeal paperwork;

24. The above representations are false and untrue. The true facts were that:

- (a) Defendant had no intention of modifying Plaintiffs' loan but instead intended to induce them to default and keep them in default as long as possible.
- (b) Defendant would not provide a decision on their request within 45 days. Defendant knew that it routinely kept borrowers waiting for six (6) months, a year or longer for decisions and that these borrowers suffered delay, anxiety and often foreclosure while trying to secure affordable payments that would allow them to keep

1 their homes;

2 (c) That the file did not need to be constantly updated because Defendant was
3 already in possession of the requested information and documents.

4 25. Defendant made the above misrepresentations with the intention of influencing the conduct
5 of Plaintiffs.

6 26. Plaintiffs reasonably relied on these representations.

7 27. As a proximate result of the fraudulent misrepresentations set forth herein, Plaintiffs have
8 been damaged in an amount in excess of \$10,000.00.

9 28. In doing the acts herein alleged, Defendant acted with oppression, fraud and malice, and
10 Plaintiffs are therefore entitled to an award of punitive damages.

11 **SECOND CAUSE OF ACTION**
12 **(Violation of Deceptive Practices Act)**

13 29. Plaintiffs repeat and reallege each and every allegation above and incorporates such
14 as if fully set forth herein.

15 30. The Nevada Deceptive Practices Act applies to unfair business practices including but not
16 limited to practices that are “unlawful,” “unfair,” or “deceptive” business practices.

17 31. Defendant’s acts and practices alleged herein constitute unfair business practices, including,
18 without limitation, the following practices:

19 (a) Failing to perform loan servicing functions consistent with its responsibilities to
20 Plaintiffs and its responsibilities under HAMP;

21 (b) Failing to properly supervise its agents and employees, including without limitation,
22 its loss mitigation and collection personnel, foreclosure personnel, and personnel implementing its
23 modification programs;

24 (c) Failing to permanently modify loans and using unfair means to cause and keep
25 Plaintiffs in default;

26 (d) Routinely demanding information it already had and failing to communicate
27 accurately or consistently with Plaintiffs about the status of their loan modification application;

28 (e) Making inaccurate calculations and determinations of Plaintiffs’ eligibility for a

1 permanent modification;

2 (f) Engaging in acts and practices that prolonged the modification process;

3 (g) Making misrepresentations and omissions of material fact regarding the status of
4 Plaintiffs' loan modifications and loan payments;

5 (h) Making misrepresentations to Plaintiffs which were objectively material to a
6 reasonable consumer, and therefore Plaintiffs' reliance upon such representations may be presumed
7 as a matter of law, and Plaintiffs did in fact believe the misrepresentations were reasonable and did
8 in fact rely upon them.

9 32. Plaintiffs justifiably and reasonably relied upon these misrepresentations and omissions of
10 material facts.

11 33. As a result of Defendant's violations and unlawful, unfair, and deceptive business practices,
12 Plaintiffs suffered damages in excess of \$10,000.00.

13 34. Plaintiffs are entitled to recover their reasonable attorney's fees, costs, and expenses incurred
14 in bringing this action.

15 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

16 1. For Equitable Relief, including an order for Defendant to engage in reasonable efforts
17 to restore Plaintiffs' credit to its previous standing;

18 2. The Court enter a judgment declaring Defendant's acts and practices complained of
19 herein to be unlawful, unfair and fraudulent as well as a declaration that Defendant is required by
20 th doctrine of promissory estoppel to offer permanent modifications of the loans to Plaintiffs;

21 3. For injunctive relief against Defendant to prevent future wrongful conduct and/or
22 foreclosure;

23 4. For actual statutory damages according to proof at trial, or in the alternative, that
24 Defendant be ordered to make restitution to Plaintiffs pursuant to law;

25 5. For punitive damages pursuant to law;

26 6. For an award of attorney's fees and costs pursuant to law;

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1 7. For such other and further relief as this Court may deem proper.

2 **DEMAND FOR JURY TRIAL**

3 DATED this 24th day of March, 2014.

4 JOHN PETER LEE, LTD.

6 BY: /s/Micheal J. Brock

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